

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**

IN RE:)	
)	
TRILOGY DEVELOPMENT COMPANY, LLC,)	Case No: 09-42219
Debtor.)	Chapter 11

**MOTION FOR FIFTH EXTENSION OF POST-PETITION FINANCING AND
INCREASE OF BORROWING LIMIT**

COMES NOW Debtor Trilogy Development Company, LLC, by and through undersigned counsel, and for its Motion for Fifth Extension of Post-Petition Financing and Increase of Borrowing Limit, states as follows:

I. SUMMARY OF PROPOSED EXTENDED POST-PETITION FINANCING TERMS

1. The proposed terms of this requested extension of post-petition financing are as follows:

- A. Parties: Trilogy Development Company, LLC (the “Debtor”) as debtor-in-possession and borrower and BB Syndication Services, Inc. (the “Lender”) as post-petition lender.
- B. Principal Amount: an amount not to exceed \$130,000 (the “Fifth Additional Financing”) to fund anticipated expenses (consistent with prior budgets) for thirty (30) days through the expected closing on the sale of the Project (as defined below).
- C. Maturity: the pre-existing financing comprised of
 - (i) the original post-petition financing of \$800,000 (the “Original Financing”) arising out of the Motion for Entry of Interim and Final Orders (A) Authorizing Post-Petition Financing and

- (B) Request for Scheduling Hearings on Interim and Final Approval (the “Financing Motion”), filed June 25, 2009 (Doc. #42) and approval of same by the Interim Order (Doc. #52) and Final Order (Doc. #61),
- (ii) the additional financing of \$400,000 (the “Additional Financing”) arising out of the Motion for Extension of Post-Petition Financing and Increase of Borrowing Limit (Doc. #74) and Order Approving Extension of Post-Petition Financing and Increase of Borrowing Limit (Doc. #79) entered on October 15, 2009 (the “Additional Financing Order”),
- (iii) the additional financing of \$700,000 (the “Second Additional Financing”) arising out of the Motion for Second Extension of Post-Petition Financing and Increase of Borrowing Limit (Doc. #97) and Order Approving Second Extension of Post-Petition Financing and Increase of Borrowing Limit (Doc. #105) entered on December 16, 2009 (the “Second Additional Financing Order”),
- (iv) the additional financing of \$500,000 (the “Third Additional Financing”) arising out of the Motion for Third Extension of Post Petition Financing and Increase of Borrowing Limit (Doc. #130), and Order Approving Third Extension of Post-Petition Financing and Increase of Borrowing Limit (Doc. #134) entered on February 23, 2010 (the “Third Additional Financing Order”), and

(v) the additional extension without any increased borrowing (the “Fourth Extension”) arising out of the Motion for Fourth Extension of Post-Petition Financing (Doc. #149) and Order granting the Fourth Extension (Doc. #154) entered on May 26, 2010;

shall be repaid on the earlier of (i) September 30, 2010 or (ii) the occurrence of a Termination Event as defined in the Final Order.

D. Remaining Terms: all other terms and conditions of this Fifth Additional Financing shall be the same as set forth in Section I, “Summary of Proposed Post-Petition Financing Terms,” of the Financing Motion and approved in the Final Order.

II. BACKGROUND

2. On May 15, 2009, Debtor filed its voluntary Petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Code”). Debtor retains possession of its property and control of its affairs pursuant to 11 U.S.C. §§ 1107 and 1108.

3. Debtor’s business consists of the ownership and operation of a substantial real estate development located in the Plaza area of Kansas City, Missouri and described as the West Edge Project (the “Project”). The Project is a mixed use development consisting of a hotel and office building with a parking structure. This development entails a variety of construction and financial issues which precipitated the bankruptcy filing and involves a significant number of other parties.

4. Debtor’s principal source of financing derived from that certain pre-petition Construction Loan Agreement, dated March 27, 2006, with Lender (the “Prepetition Credit Agreement”) which provided the funding for construction of the Project. The indebtedness and obligations of the Debtor to Lender under the Prepetition Credit Agreement and all related notes,

instruments, agreements, and other documents are hereinafter referred to collectively as the “Prepetition Indebtedness.” The Prepetition Indebtedness is secured by essentially all of Debtor’s assets which primarily consist of the land and improvements comprising the Project (the “Prepetition Collateral”). Various contractors and suppliers have asserted mechanic liens under Missouri law, which lien claims are the subject of that certain adversary action pending in this Court. Marshall & Ilsley Bank (“M&I Bank”) asserts a junior lien against the Prepetition Collateral.

5. Protection of the Project and preservation of its value are paramount issues in this case. An ongoing need exists for the Debtor to obtain sufficient post-petition financing with which to continue its operations, acquire goods and services, and pay other necessary and ordinary business expenses. Specifically, Debtor requires the funds necessary to address and discharge such vital needs as the expenses for a) continuous insurance coverage (including renewal of builder’s risk insurance coverage otherwise expiring near the end of August), b) security personnel and alarm systems to safeguard the Project, c) electrical power at the Project, and d) administrative expenses of the Chapter 11 case.

6. Debtor is currently pursuing the sale of the Project in accordance with the Motion Under Sections 105(a) and 363 of the Bankruptcy Code to (I) Approve the Auction and Bid Procedures, (II) Approve the Sale of Property Outside the Ordinary Court of Business Free and Clear of Liens and Interests, and (III) Request for Expedited Hearing (Doc. #160) as approved by the Order Approving Motion to Sell Motions Under Section 105(a) and 363 of the Bankruptcy Code to (I) Approve the Auction and Bid Procedures, (II) Approve the Sale of Property Outside the Ordinary Court of Business Free and Clear of Liens and Interests, and (III) Request for Expedited Hearing, dated August 11, 2010 (Doc. #182). An auction for the sale of the Project is

scheduled for August 26, 2010 and a hearing is set on August 31, 2010 to approve the sale. Debtor anticipates a closing on the sale within thirty (30) days of the August 31, 2010 hearing. Accordingly, it is vital for Debtor to obtain the necessary financing to maintain the viability of the Project and the Chapter 11 case through closing.

III. POST-PETITION FINANCING

7. In the aftermath of the bankruptcy filing, Debtor, by and through counsel, commenced good faith negotiations with Lender and its counsel to secure post-petition financing to address the foregoing expenses. The parties ultimately reached agreement on post-petition financing in the total sum of \$800,000.00 as provided in the Financing Motion. The Financing Motion, subsequently approved by the Interim and Final Orders, provided funding to Debtor based on a budget for costs through September 30, 2009.

8. Thereafter, Debtor sought approval of the Additional Financing in accordance with a budget covering a two-month period commencing on October 1, 2009 and ending November 30, 2009. The Additional Financing entailed increased funding of \$400,000.00, thereby resulting in total post-petition financing of \$1,200,000.00. The Additional Financing was approved in the Additional Financing Order.

9. Following the lapse of the Additional Financing, Debtor sought approval of the Second Additional Financing in accordance with a budget covering a two-month period commencing on December 1, 2009 and ending January 31, 2010. The Second Additional Financing entailed increased funding of \$700,000.00, thereby resulting in total post-petition financing of \$1,900,000.00. The Second Additional Financing was approved in the Second Additional Financing Order.

10. In view of the ongoing need for financing, Debtor sought approval of the Third Additional Financing in accordance with a budget covering a four-month period commencing on

February 1, 2010 and ending May 31, 2010. The Third Additional Financing entailed increased funding of \$500,000.00, thereby resulting in total post-petition financing of \$2,400,000.00. The Third Additional Financing was approved in the Third Additional Financing Order.

11. With the approach of the May 31 expiration of the Third Additional Financing, Debtor sought approval of the Fourth Extension in order to retain authorization for continuing use of the existing post-petition financing through August 31, 2010. The Fourth Extension was duly approved and Debtor has continued to operate with the existing financing.

12. Debtor now seeks approval of the Fifth Additional Financing pursuant to sections 364 and 105 of the Code. All previously approved terms for adequate protection of Lender and M&I Bank would be maintained. The current financing expires on August 31, 2010 and, in the absence of the requested financing through September 30, Debtor will be unable to maintain the basic protections necessary for preservation of the Project through the anticipated closing on the sale. In such event, preservation of the value of the Project could be severely jeopardized and the bankruptcy estate would be exposed to irreparable damage and loss.

WHEREFORE, Debtor requests the Court to enter its Order approving this Motion, authorizing the financing on the terms herein requested, and granting any other relief appropriate under the circumstances.

Respectfully submitted,

MCDOWELL RICE SMITH & BUCHANAN

/s/ Jonathan A. Margolies

Jonathan A. Margolies

MO #30770

605 W. 47th Street, Suite 350

Kansas City, Missouri 64112

Telephone: (816) 753-5400

Facsimile: (816) 753-9996

email: jmargolies@mcdowellrice.com

ATTORNEYS FOR DEBTOR